



# DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 177  
May 24, 1993

## INVESTIGATORY STOP OF VEHICLE--NO PROBABLE CAUSE

Reference: Charlie A. Hays  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1292  
P.2d  
April 23, 1993

### FACTS:

A police dispatcher received a telephone call from a 7-11 store regarding theft of gasoline. A driver had pumped gas into his vehicle and left without making payment.

The dispatcher furnished patrol officers with a description of the vehicle and its occupants. Fifteen minutes after receiving the report, a police officer observed a green Ford pickup coming from the direction of the store.

After pulling the pickup over, but before getting out of his patrol car, the officer realized there were some discrepancies between the truck he had just stopped and the vehicle description provided by the dispatcher. The pickup license plate number did not match the one reported. Also, the truck had only two male occupants, rather than two males and one female as reported by the person who had called in the gas theft. The officer, however, was not convinced that he had stopped the wrong vehicle. He asked the driver to produce identification. At that time, the officer learned that the driver's license had been revoked. The driver's name was Charlie Hays and he had not been at the 7-11 store.

### ISSUE:

Did the officer have enough probable cause to justify the investigative stop of the vehicle?

HELD: No.

### REASONING:

1. A well-founded suspicion that a crime is in progress or has just been completed may justify a stop even though the crime itself is not a particularly serious one. (emphasis added)

2. The report received by the officer was a minor crime and included no suggestion of an imminent threat to public safety.
3. The officer did not recall having been given any indication of the gas thief's direction of travel.
4. The officer did not articulate any particular reason to suspect encountering the thief where and when Hays was contacted.
5. Hays' truck matched the description only in that it was a green Ford pickup. The number of passengers differed from that reported. More importantly, Hays' license plate number did not match that of the truck involved in the gas theft.
6. The record discloses no practical necessity for the immediate stop of Hays' vehicle.

NOTES:

In this case, the court felt the officer should have simply followed the truck to obtain more information prior to stopping it. The officer could have determined the number of occupants, observed the license plate, and realized that the variance between Hays' truck and the reported description of the suspect vehicle made it unreasonable to suspect Hays of the gas theft.

The court has approved investigatory stops on vehicles where the officer has received specific information. For example, refer to the following cases:

Smith v. State, Legal Bulletin No. 21, where a "locate" had been put out on a vehicle because the driver was operating it without a license.

Goodlataw v. State, Legal Bulletin No. 175, where a car was stopped after police received an anonymous call informing them the driver was drunk.

Compare the above cases with Allen v. State, Legal Bulletin No. 137, where police stopped a vehicle based on an anonymous caller's report that a driver was selling drugs--not enough probable cause to justify the stop.

Review of Section I of the Alaska Legal Briefs manual is recommended.

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NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section I, "Investigatory Seizure of Persons and Things (Stop & Frisk)," and Section M, "Warrants, Affidavits and Informants," of your Contents and Text. File Legal Bulletin No. 177 numerically under Section R of the manual.